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Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@boultcummings.com

August 4, 2003

I.R.A. DOCKET ROOM

Deborah Taylor, Tate Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition for Arbitration of ITC DeltaCom Communications, Inc. with BellSouth
Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996
Docket No. 03-00119*

Dear Chairman Tate:

Please accept for filing in the above-captioned proceeding the original and fourteen
copies of Direct Testimony of the following on behalf of ITC^DeltaCom:

Joseph Gillan,
Don J. Wood
Mary Conquest
Jerry Watts
Steve Brownworth

I have enclosed an additional copy to be stamped "filed." I appreciate your assistance in
this matter.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

Henry Walker
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219
(615) 252-2363


HW/pp
Encl.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

Guy Hicks
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

on this the 4th day of August, 2003.



Henry Walker

1 **Q: PLEASE STATE YOUR NAME POSITION AND BUSINESS ADDRESS.**

2 A: My name is Jerry Watts, I am Vice President of Government and Industry Affairs
3 for ITC^DeltaCom, Inc. My business address is 4092 South Memorial Parkway,
4 Huntsville, Alabama, 35802.

5
6 **Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND BUSINESS**
7 **EXPERIENCE.**

8 A: I am a graduate of Auburn University with a B.S. in Accounting. I have over thirty
9 years experience in the telecommunications industry including positions with
10 Southern Bell, South Central Bell, BellSouth, AT&T, and ITC^DeltaCom. Most of
11 my career has been in the area of Government Affairs with responsibility for both
12 regulatory and legislative matters at the state and federal level.

13
14 I have served as an officer or board member for several industry associations
15 including the Alabama Mississippi Telephone Association, The Georgia
16 Telephone Association, The Alabama Inter-Exchange Carriers Association, The
17 Southeastern Competitive Carriers Association and The Georgia Center for
18 Advanced Telecommunications Technology. I currently serve as President of
19 The Competitive Carriers of the South, ("CompSouth"), a non-profit association of
20 seventeen competitive telecommunications companies operating in the
21 southeast.

1 I have previously presented testimony in Alabama, Georgia, Louisiana,
2 Mississippi, Tennessee and Florida.

3
4 **Q: WHAT ARE YOUR RESPONSIBILITIES AT ITC^DELTACOM?**

5 A: I am responsible for ITC^DeltaCom's relationship with state and federal
6 government entities including state public utility commissions, state legislatures,
7 the FCC and the US Congress. I am also responsible for facilitating the working
8 relationship of ITC^DeltaCom with other telecommunications companies
9 including incumbent local exchange companies, competitive local exchange
10 companies and interexchange carriers.

11
12 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A: The purpose of my testimony is to provide an overview of our request for
14 arbitration including the operational imperatives that underlie our position on
15 unresolved issues.

16
17 **Q: WILL YOU ADDRESS ITC^DELTACOM'S POSITION ON ALL UNRESOLVED**
18 **ISSUES IN YOUR TESTIMONY?**

19 A: No. I will address our position on certain issues and will defer to other witnesses
20 to address the issues within their area of expertise. Those witnesses along with
21 their respective arbitration issues are as follows:

22
23 Joseph Gillan will address issues 26(c) and 26(d).

1 Steven Brownworth will discuss the following Issues: 8(a), 11(b), 21, 36, 37, 44,
2 46, 47, and 57.

3
4 Mary Conquest will discuss Issues 2, 9, 25, 64, 66, and 67.

5
6 Don Wood will discuss Issue 56.

7
8 **Q: WHICH ISSUES WILL YOU ADDRESS IN YOUR TESTIMONY?**

9 A: I will address the following issues in my testimony:

10 Issue 1: Term of Agreement

11 Issue 11(a): Access to UNEs

12 Issue 26: Line Cap and Other Restrictions

13 Issue 58: Unilateral Amendments to the Interconnection Agreement

14 Issue 59: Payment Due Date

15 Issue 60: Deposits

16 Issue 62: Limitation on Back billing

17 Issue 63: Audits (BellSouth's refusal to allow pick and choose from
18 attachment 7)

19
20 **Q: ARE THERE ANY ISSUES INCLUDED IN YOUR PETITION THAT HAVE NOW**
21 **BEEN RESOLVED BETWEEN THE PARTIES?**

22 A: Yes. The following issues have been settled: 2 (d), 3, 4, 5, 6, 7, 8(b), 10,
23 11(c), 12, 13, 14, 15, 16, 17, 18, 19, 20(a) and (b), 22, 23, 24, 27, 28, 29, 30, ~~31~~,
|

1 ~~31, 32, 32~~, 33, ~~34, 35, 35~~, 38, 39, 40, 41, 42, 43, 45, 48, 49, 50, 51, 52, 53, 54,
2 55, 61, 65, 68, 69, 70, and 71.

3
4 **Q: WHY HAS ITC^DELTACOM REQUESTED ARBITRATION OF THE ISSUES IN**
5 **THIS CASE?**

6 A: Following several months of good faith negotiations with BellSouth, we
7 determined that the parties could not resolve the issues identified in our petition.
8 Since filing the arbitration petition on February 7, 2003, we have continued
9 settlement discussions and mediation and have reduced the number of pending
10 issues. The remaining issues have a direct impact on ITC^DeltaCom's ongoing
11 ability to serve our customers and to compete with other competitive local
12 exchange companies ("CLECs") and incumbent local exchange companies
13 ("ILECs"). Our positions on the issues in this case are supported by our rights
14 under the federal Telecommunications Act of 1996 ("Telecommunications Act" or
15 "Act") and are consistent with the needs of our business.

16
17 **Q: WHAT ARE THE OPERATIONAL AND BUSINESS IMPERATIVES THAT**
18 **SUPPORT YOUR POSITION?**

19 A: Through this arbitration we seek a mutually beneficial interconnection agreement
20 with BellSouth based on the basic principles of parity, non-discrimination,
21 reciprocity, and continuity. These principles provide the arbitration panel with a
22 framework to decide the contested issues in a way that ensures the protection of
23 the rights of the parties and the best interest of Tennessee consumers.

1
2 **Q: HOW IS PARITY ADDRESSED BY YOUR PETITION AND WHY IS IT A**
3 **REQUIREMENT OF THE ACT?**

4 A: Parity is required so that ITC^DeltaCom can be assured of a reasonable
5 business relationship with its dominant provider of wholesale services, BellSouth.
6 Without a requirement of parity, BellSouth would be able to discriminate in favor
7 of its own retail interests and/or affiliates and make it virtually impossible for a
8 CLEC like ITC^DeltaCom to compete. Because BellSouth is the dominant
9 provider of wholesale services to CLECs and the dominant retail competitor of
10 CLECs, the parity requirements of the Act must be effectively enforced through
11 appropriate contract language and performance measurement plans and
12 penalties. Moreover, Congress explicitly recognized the vulnerability of
13 competitive carriers and, to help level the field between new entrants and
14 incumbents, required the ILECs to provide access to UNEs on "terms, and
15 conditions that are just, reasonable, and nondiscriminatory." (47 U.S.C. §
16 251(c)(3)).

17
18 The Federal Communications Commission ("FCC"), in interpreting this statutory
19 language, has explained that this language "means, at a minimum, that whatever
20 those terms and conditions are, they must be offered equally to all requesting
21 carriers, and where applicable, they must be equal to the terms and conditions
22 under which the incumbent LEC provisions such elements to itself."(See First
23 Local Competition Order, ¶ 315 (internal citations omitted)). Furthermore, the

1 FCC also held that, in order to be consistent with the Act's goal of promoting
2 competition, the ILEC must be held to a higher standard than just providing all
3 competitors with the same level of service. Rather, the FCC held that the terms
4 of Section 251(c)(3) "require incumbent LECs to provide unbundled elements
5 under terms and conditions that would provide and efficient competitor with a
6 meaningful opportunity to compete." (Id.)

7
8 In addition, the FCC has held that, in order to provide nondiscriminatory access
9 to UNEs, "incumbent LECs must provide carriers purchasing access to
10 unbundled network elements with the pre-ordering, ordering, provisioning,
11 maintenance and repair, and billing functions of the incumbent LECs operations
12 support systems." (Id. at ¶ 316 (internal citations omitted). *See also*, 47 C.F.R. §
13 51.313(c) ("[a]n incumbent LEC must provide a carrier purchasing access to
14 unbundled network elements with the pre-ordering, ordering, provisioning,
15 maintenance and repair, and billing functions of the incumbent LEC's operations
16 support systems.")

17
18 Consistent with the Act, and the FCC's orders interpreting the requirements of
19 the Act, ITC^DeltaCom has requested that BellSouth provide Operational
20 Support System ("OSS") capabilities as well as interconnection and service
21 delivery options that allow ITC^DeltaCom to have the opportunity to deliver
22 competitive products and services to consumers on at least the same terms as
23 BellSouth. Every request has been based on a reasonable expectation that

1 BellSouth can and should provide UNEs on the nondiscriminatory (parity) terms
2 required by the Act. Although performance measure plans are one tool for
3 monitoring parity and enforcing parity, these plans are not adequate to replace
4 the specific contractual obligations requested in our petition.
5

6 **Q: HOW ARE THE ISSUES IN THIS ARBITRATION IMPACTED BY NON-**
7 **DISCRIMINATION AS OPPOSED TO THE REQUIREMENT OF "PARITY"**
8 **WITH BELL SOUTH?**

9 A: Nondiscrimination is required to prohibit those situations where BellSouth seeks
10 to impose disparate requirements or conditions on ITC^DeltaCom as compared
11 to BellSouth's other wholesale customers. Discrimination among wholesale
12 customers distorts competitive forces and has a net negative impact on
13 consumers. Moreover, BellSouth must not be allowed to discriminate among the
14 various modes of entry used by CLEC competitors and prescribed by the ACT. In
15 its provisioning of wholesale services, whether "resale", "UNE's", or "tariffed
16 services", non-discrimination is essential to ensure that CLEC's can purchase
17 and use the services they require to serve their customers.
18
19

20 **Q: HOW ARE THE ISSUES IN THIS CASE IMPACTED BY RECIPROCITY AND**
21 **CONTINUITY?**

22 A: Reciprocity is a key principle required for a reasonable and mutually beneficial
23 business relationship between ITC^DeltaCom and BellSouth. Reciprocity should

1 be applied to those issues that are related to terms and conditions such as
2 deposit requirements, as well as issues related to the right to bill for like services
3 and processes when they are provided by either party. The principle of equal
4 pay for equal services performed should apply to both parties. However,
5 contrary to BellSouth's argument, it is not realistic to require a small non-
6 incumbent carrier such as ITC^DeltaCom to adhere to the same performance
7 measures and enforcement mechanisms as those currently required of
8 BellSouth.

9
10 Continuity relates to the continuation of provisions of the prior contract that have
11 had a significant impact on ITC^DeltaCom's operational plans and strategies.
12 Changes to existing contract provisions that have a significant impact should only
13 be made in response to government mandate or mutual agreement. The net
14 result of arbitrary and unnecessary changes is the addition of cost that is
15 ultimately borne by consumers.

16
17 **Issue 1: Term of Agreement**

18 **Q: WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION PANEL**
19 **REGARDING THE TERM OF THE INTERCONNECTION AGREEMENT?**

20 **A:** ITC^DeltaCom has requested a contract term of five years. BellSouth will not
21 agree to an agreement longer than three years. Further, BellSouth proposes to
22 convert the arbitrated interconnection agreement to BellSouth's template

1 agreement at the end of three years if the Authority has not approved a
2 replacement contract.

3
4 A five year contract will benefit both ITC^DeltaCom and BellSouth as well as the
5 Tennessee Regulatory Authority. The cost of negotiating, mediating and
6 arbitrating an interconnection agreement is substantial for both parties.
7 Moreover, the cost to the Authority that is borne by Tennessee taxpayers is also
8 substantial. Distributing those costs over five years as compared to three years
9 reduces the per-year cost by 13.3%. These very real costs that ultimately are
10 paid by the consuming public can be easily mitigated by a longer contract period.

11
12 Our experience with the existing interconnection agreements further illustrates
13 the inefficiency of a three-year contract. Due to the timing of regulatory orders
14 and on-going disputes between the parties, the existing three-year
15 interconnection agreements were only approved for approximately an average of
16 fifteen months before their scheduled expiration. Due to the magnitude of the
17 negotiation/arbitration process, the parties agreed to extend the agreements by
18 six months, resulting in an effective contract term of three and one half years or
19 only eighteen months shorter than the five year term being proposed by
20 ITC^DeltaCom.

21
22 A longer contract term also provides continuity in our business relationship with
23 BellSouth and extends the planning horizon for operational and marketing

1 strategies. Regardless of the term, the interconnection agreement is not a static
2 document and both parties are protected under the change of law provisions.

3
4 The shorter three-year agreement proposed by BellSouth imposes additional
5 annual cost on the companies, requires more work and expense by the Authority,
6 and provides no discernable benefits.

7
8 Additionally, BellSouth's proposal to revert to its template agreement at the end
9 of the contract term would result in ITC^DeltaCom being exposed to the
10 requirements of an interconnection agreement that has not been approved by
11 any regulatory body. Currently, our interconnection agreement (as well as many
12 other interconnection agreements on file with the Authority) provide that until the
13 Authority issues a decision in the arbitration, the parties will operate under the
14 existing Authority-approved interconnection agreement. The result of BellSouth's
15 proposal could be a negative impact on consumers that would be beyond the
16 control of the Authority. It should be noted that ITC^DeltaCom's interconnection
17 agreements with other ILECs such as SBC, Sprint and Verizon allow
18 ITC^DeltaCom to continue under the same rates, terms and conditions while the
19 Authority deliberates on the arbitration issues.

20
21 ITC^DeltaCom recommends adoption of a five year interconnection agreement
22 and at the end of five years an automatic month to month extension of the
23 agreement until a replacement contract is approved by the Authority.

1
2 **Issue 11(a): Access to UNEs**

3 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING ACCESS TO UNES**
4 **AND WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION PANEL?**

5 A: The recent FCC decision in its Triennial Review, along with the analysis to be
6 performed by state public utility commissions, will have a significant impact on
7 this and other issues related to the availability of unbundled network elements.
8 ITC^DeltaCom's position in this proceeding will reflect our understanding of
9 current statutory and regulatory requirements and our analysis of the FCC press
10 release regarding the Triennial decision. We reserve the right to amend our
11 position when the Triennial order is released and to the extent state commission
12 impairment cases impact existing rules and requirements.

13
14 In conjunction with Issue 11(a), ITC^DeltaCom asserts that the interconnection
15 agreement language should specify that BellSouth's rates, terms, and conditions
16 for network elements and combinations of network elements must be compliant
17 with both state and federal rules and regulations. BellSouth's position is that
18 there should be no reference to state authority because the agreement is only
19 subject to section 251 of the Telecommunications Act.

20
21 The interconnection agreement clearly must be compliant with both federal and
22 state requirements. The plain language of the Act, in preserving state authority,
23 states that the FCC "shall not preclude the enforcement of any regulation, order,

1 or policy of a State commission” so long as those regulations, orders, or policies
2 pertain to the access and interconnection obligations of local exchange carriers,
3 and are consistent with, and do not frustrate the implementation of, Section 251
4 of the Act. (47 U.S.C. § 251(d)(3)).

5
6 Furthermore, Section 261 of the Act specifically provides that

7 [n]othing in this part precludes a State from imposing requirements on a
8 telecommunications carrier for intrastate services that are necessary to
9 further competition in the provision of telephone exchange service or
10 exchange access, as long as the State’s requirements are not inconsistent
11 with this part or the Commission’s regulations to implement this part. (47
12 U.S.C. § 261.)
13
14

15 The Act contains explicit statutory language preserving state authority to enforce
16 state-created interconnection obligations that are not inconsistent with the Act,
17 along with the explicit delegation of authority to the states in their role as arbiters
18 of interconnection obligations “to arbitrate any open issues.” (47 U.S.C. §
19 252(b)(1)).
20

21 Therefore, the Tennessee Regulatory Authority is well within its authority to
22 require any interconnection agreement that results from this arbitration to comply,
23 and be consistent with, other regulations, orders, and policies of this Authority.
24

25 ITC^DeltaCom recommends that the agreement include specific language
26 requiring compliance with both state and federal requirements for unbundled

1 network element rates terms and conditions. Our proposed language is as
2 follows:

3
4 This Attachment sets forth rates, terms and conditions for
5 Network elements, combinations of Network Elements, Operator
6 Services and Directory Assistance as required by state and
7 federal rules and regulations and pursuant to Section 251(c)(3) of
8 the Act.

9
10 Subpart (b) of Issue 11 will be addressed in the Prefiled Testimony of Mr.
11 Brownworth.

12
13 **Issue 26: Line Cap and Other Restrictions**

14 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING LINE CAP AND OTHER**
15 **RESTRICTIONS AND WHAT IS YOUR RECOMMENDATION TO THE**
16 **ARBITRATION PANEL?**

17 **A:** Issue 26 (a) through (c) address the pricing and availability of unbundled local
18 switching. Although it is easiest to address each subpart separately, a general
19 observation would be useful: BellSouth's federal obligations to offer unbundled
20 local switching are being addressed by the FCC's recently announced, but not
21 yet released, decision in the Triennial Review. That decision is expected to
22 provide the Authority guidance as to how it should evaluate whether local
23 switching should be made available, and the results from those Tennessee

1 specific proceedings will, of course, be important to the final interconnection
2 agreement between ITC^DeltaCom and BellSouth. To some extent, issue 26 is
3 awkwardly situated. In part it addresses a prior federal rule (the "4-line"
4 restriction) that is no longer relevant; and in part, it addresses how "replacement"
5 prices would be established should the Authority determine in the future that
6 switching (or some other network element) should no longer be offered at
7 TELRIC-based rates. Nevertheless, these issues have been raised and, to the
8 extent that the issues can be addressed, my testimony does so.

9
10 **Q: PLEASE EXPLAIN ISSUE 26(A).**

11 A: Issue 26(a) addresses whether the line cap on local switching (to the
12 extent that such a federal restriction remains in effect) should be applied.

13 Today, the current contract provides as follows:

14 Notwithstanding BellSouth's general duty to unbundle local circuit
15 switching, BellSouth shall not be required to unbundle local circuit
16 switching for ITC^DeltaCom, when ITC^DeltaCom serves a single
17 end users account name at a single physical end user location with
18 four (4) or more two (2) wire voice grade loops equivalents or lines
19 in locations served by BellSouth's local circuit switches, which are
20 in the following MSAs:....

21
22 BellSouth argues that if an end user that has more than one location the lines
23 should be aggregated. ITC^DeltaCom disagrees with BellSouth's interpretation of
24 the federal rule generally – including whether it is even still in effect. While the
25 Tennessee Regulatory Authority addressed the issue of aggregating lines in the
26 AT&T /BellSouth arbitration in Docket No. 00-00079, Order issued November 29,
27 2001 at pages 18-19, ITC^DeltaCom notes that the Tennessee Regulatory

1 Authority approved the BellSouth/ITC^DeltaCom existing interconnection
2 agreement which provides that BellSouth will provide unbundled local switching
3 except in those instances where a particular end user at a particular location has
4 4 or more DSO lines. ITC^DeltaCom seeks to keep the same language in its
5 existing interconnection agreement that was approved by this Authority.
6 Moreover, as explained in Mr. Gillan's testimony, BellSouth must still offer
7 ITC^DeltaCom switching to serve all customers, although there are issues
8 concerning its price.

9
10 **Q: PLEASE EXPLAIN ISSUE 26(B).**

11 A: Issue 26(b) addresses the need for contract language that prohibits BellSouth
12 from imposing restrictions on local switching. Although this language is included
13 in the existing interconnection agreement and in the interconnection agreement
14 of other CLECs, BellSouth refuses to include the requested language.
15 ITC^DeltaCom asserts that the language is necessary to ensure that BellSouth
16 does not attempt to impose arbitrary restrictions or limitation, either explicitly or
17 implicitly, that create barriers to ITC^DeltaCom's ability to access UNEs under
18 state and federal rules and regulations.

19
20 ITC^DeltaCom recommends the inclusion of the following proposed language:

21
22 Except as otherwise provided herein, BellSouth shall not impose
23 any restrictions on ITC^DeltaCom regarding the use of Switching

1 Capabilities purchased from BellSouth provided such use does not
2 result in demonstrable harm to either the BellSouth network or
3 personnel or the use of the BellSouth network by BellSouth or any
4 other telecommunications carrier.
5

6 **Q: PLEASE EXPLAIN ISSUE 26(C).**

7 A: Issue 26(c) addresses the requirement for BellSouth to obtain Authority approval
8 for a methodology for establishing a replacement rate (sometimes labeled
9 incorrectly as a "market" rate) in those instances where a replacement rate is
10 authorized in lieu of TELRIC pricing. Clearly BellSouth is required to provide
11 unbundled network elements under the competitive checklist in section "271" of
12 the Telecom Act in addition to its obligations under section "251". When a UNE
13 is removed from the unbundling obligations of section 251, the state public utility
14 commission has the responsibility and the authority to approve a "just and
15 reasonable" replacement rate. For BellSouth to characterize the proposed rates
16 as "market rates" without a demonstration that a competitive market exist is
17 inappropriate. Clearly, BellSouth's existing "market rate" for an unbundled port of
18 \$14.00 as compared to the ordered Tennessee cost based TELRIC rate of \$1.89
19 indicates the absence of competitive alternatives. Moreover, BellSouth's so
20 called "market rate" nonrecurring charge of \$90.00 as compared to the
21 Tennessee Regulatory Authority approved non-recurring rate of \$1.03 ("switch as
22 is" NRC) also demonstrates the lack of competition and the arbitrary nature of
23 these rates. The only other explanation for BellSouth proposing such outrageous

1 rates would be to effectively abandon their "271" unbundling requirements by
2 setting rates so high that it would, as a practical matter, be impossible to
3 impossible for a CLEC to purchase and utilize the UNE in the provision of a retail
4 service. ITC^DeltaCom asserts that BellSouth can not be allowed to arbitrarily
5 and unilaterally establish a replacement rate for local switching or any other
6 network element without TRA approval of the methodology for establishing the
7 rate and TRA review of the underlying data.

8
9 Mr. Gillan's testimony includes a more detail analysis of this issue along with a
10 recommendation on how these "replacement" rates should be established.

11
12 **Issue 58: Unilateral Amendments to the Interconnection Agreement**

13 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING UNILATERAL**
14 **AMENDMENTS TO THE INTERCONNECTION AGREEMENT?**

15 **A:** BellSouth desires to incorporate their Guides, documents written by BellSouth
16 without any regulatory oversight or input from the industry, into the
17 interconnection agreement. BellSouth would be able to modify these "Guides" at
18 any time without approval or input from ITC^DeltaCom, any other carrier, or this
19 Authority, and then apply them to ITC^DeltaCom.

20
21 One party to a contract cannot unilaterally make changes that affect the other
22 party. ITC^DeltaCom's position is that any reference to a document or source
23 must be clearly defined at a date certain or the document must be included as an

1 attachment to the agreement. Any changes to that document that would have
2 more than a de minimus impact on ITC^DeltaCom's operations or expenses
3 ~~must~~expenses must be mutually agreed to by the parties. BellSouth would prefer
4 to be in the position to arbitrarily alter the terms of the contract without
5 ITC^DeltaCom's knowledge and or approval or the knowledge or approval of the
6 Authority. ITC^DeltaCom recommends that BellSouth be prohibited from making
7 changes to any document or source referenced in the interconnection
8 agreement, if such change has more than a de minimus impact on
9 ITC^Deltacom's operations or expenses, without the approval of ITC^Deltacom.
10 ~~referencing that~~referencing that are not attached to the interconnection
11 agreement.
12

13 **Issue 59: Payment Due Date**

14 **Q: WHAT IS YOUR POSITION REGARDING PAYMENT DUE DATES AND WHAT**
15 **IS YOUR RECOMMENDATION TO THE ARBITRATION PANEL?**

16 A: ITC^DeltaCom's position is that the payment due date for BellSouth invoices be
17 no sooner than 30 days from ITC^DeltaCom's receipt of the invoice. Given the
18 availability and use of electronic invoicing, and the fact that well over 90% of
19 BellSouth billing to ITC^Deltacom is electronic, this is a reasonable due date
20 based on the general commercial practice of 30-day due dates. Utilizing the
21 received date as the starting point for the 30 days is critical because BellSouth
22 has an extensive record of late or delayed billing. ITC^DeltaCom currently
23 receives approximately 1700 invoices per month from BellSouth and should not

1 be required to compensate for deficiencies in BellSouth's billing systems.
2 Moreover, ITC^DeltaCom's record of prompt payment should not be unfairly
3 impacted by unrealistic due dates on late-delivered invoices.

4
5 ITC^DeltaCom recommends adoption of a billing due date standard of 30 days
6 from receipt of the invoice.

7
8 **Issue 60: Deposits**

9 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING DEPOSITS, AND**
10 **WHAT IS YOUR RECOMMENDATION TO THE ARBITRATION PANEL?**

11 A: The deposit language should be reciprocal because BellSouth does pay for
12 certain services performed by ITC^DeltaCom and furthermore should pay for
13 work performed by ITC^DeltaCom on BellSouth's behalf. If a party has a good
14 payment history, no deposit should be required. Therefore, BellSouth's
15 resistance to accept the terms it wishes to impose on ITC^DeltaCom is truly
16 puzzling, as it seems solely calculated to enable BellSouth to employ, with no
17 consequences attached, a strategy of bad-faith non-payment or late payment as
18 a supplement to its already-formidable market power. As I stated previously,
19 ITC^DeltaCom is willing to acknowledge that a failure to pay undisputed bills in a
20 timely manner can form the reasonable basis for additional assurance of
21 payment to the billing party. It is disappointing that BellSouth refuses to commit
22 to a reasonable, reciprocal commercial relationship, and has thereby chosen to
23 waste this Commission's resources on a request that has no legitimate basis.

1
2 What is equally unreasonable is BellSouth's insistence that ITC^DeltaCom, after
3 years of timely payment to BellSouth for wholesale services, should be required
4 to provide even greater payment assurance to BellSouth at ITC^DeltaCom's
5 expense.

6
7 To justify increasing the burden on ITC^DeltaCom, for BellSouth's benefit,
8 BellSouth claims that the telecommunications market has become more "risky"
9 and that BellSouth's obligation to provide wholesale services to requesting
10 carriers exposes it to even more risk. While this argument may attract some
11 interest, when coupled with BellSouth's casual empiricisms regarding the overall
12 state of the industry, its premise fails to withstand scrutiny. For this reason, the
13 FCC recently, and correctly, rejected the requests of BellSouth and other ILECs
14 to demand increased deposit requirements under their interstate services tariffs.
15 (*See, In the Matter of Verizon Petition for Emergency Declaratory and Other*
16 *Relief*, WC Docket No. 02-202, *Policy Statement*, Rel. December 23, 2002
17 ["Policy Statement"]).

18
19 In its Policy Statement, the FCC concluded that "the risk posed by uncollectibles
20 may not be as great as alleged by certain carriers." (Policy Statement, ¶ 14.)
21 While certain factors may reasonably precipitate accelerated billing and collection
22 cycles, the FCC nonetheless maintained the status quo with respect to deposit

1 requirements, explaining, “[w]e do not believe, however, that additional deposit
2 requirements are warranted at this time.” (Id.)

3
4 In justifying its decision not to require additional deposit requirements, the FCC
5 noted that “incumbent LECs operating under price caps normally are considered
6 subject to both the benefits and burdens of unconstrained earnings.” (Id. at ¶ 18).

7 For example, the FCC contrasted the extraordinary returns earned by
8 incumbents in the “crisis” year 2001--which for BellSouth was 19%--with their
9 more “ordinary” (although still high) returns in 1990—in which BellSouth earned a
10 13% rate of return on interstate services. (Policy Statement at ¶ 18 (internal
11 citations omitted)). The FCC’s ARMIS data is required to be reported by April 1 of
12 the following year, so as of the time this testimony was written, 2001 was the last
13 year for which data were available.

14
15 To further test the premise that BellSouth has exaggerated its exposure from its
16 obligation to wholesale services as a common carrier, ITC^DeltaCom looked at
17 the ARMIS data reported by BellSouth on report 43-04, which is BellSouth’s
18 interstate access data, net of all non-regulated revenues and associated
19 uncollectibles. The data is disaggregated into total interstate network access
20 revenue and uncollectibles (column d, rows 4014 and 4040) and total special
21 access revenue and associated uncollectibles (column o, rows 4014 and 4040).

1 According to the FCC's ARMIS data, in 2001 BellSouth had uncollectible
2 revenues of approximately \$68 million on total access service revenues of
3 approximately \$4.5 billion, for an uncollectible revenue percentage of around
4 1.5% of revenues. While this rate is approximately double the year 2000 rate of
5 .76%, the overall uncollectible rate is still extremely low. If we consider special
6 access in isolation, because this is the primary access service that
7 ITC^DeltaCom uses, the numbers get even lower still. For 2000, BellSouth had
8 uncollectible revenues for special access of \$1.5 million over total special access
9 revenues of \$1.2 billion, leaving an uncollectible revenues rate of .13%. In 2001,
10 that number did increase substantially, in percentage terms, to uncollectible
11 revenues of \$11.4 million on total special access revenues of \$1.8 billion, or
12 .62% of total special access revenues.

13
14 In other words, 62 cents out of every \$100 billed was uncollectible. This figure,
15 low as it is, should not, in any event, be considered a "loss" for BLS. Because
16 BLS is in no way capacity-constrained, it is not as if these \$11.4 million in sales
17 represented sales to non-paying customers that could have been made to more
18 credit-worthy customers. The "risk" that BellSouth faces as a wholesale carrier,
19 however, is better appreciated when compared to unregulated wholesale
20 telecommunications service providers.

21
22 To get a better sense, in relative terms, for the "risk" faced by BellSouth vs.
23 competitive carriers, we have to use a slightly "rougher" data set than that

1 available on ARMIS, but we can still get a relative idea from publicly filed data by
2 comparing a "snapshot" of various carriers at the end of their fiscal years. By
3 comparing accounts receivable allowances for doubtful accounts to overall
4 accounts receivable, we can get a sense of each carrier's bad debt exposure at
5 the point when the balance sheet data were collected. These data are not an
6 accurate depiction of the true scope of uncollectible revenues for any one firm,
7 because, as noted above, uncollectible revenue is normally an expense item that
8 is part of the "Sales, General, & Administrative" expense line on an income
9 statement. So, while this data is only a snapshot of each firm's estimated
10 allowance for uncollectible accounts out of total current accounts receivable, it is
11 still clear that BellSouth faces lower business risks than most competitive carriers
12 who have a similarly high degree of exposure to carrier customers. For
13 comparison purposes, ITC^DeltaCom chose to compare Level 3
14 Communications ("LVLT"), a long-haul wholesale transport provider, NEON
15 Communications ("NOPT"), a local metro wholesale carrier, Time Warner
16 Telecommunications ("TWTC"), a metro wholesale and large enterprise retail
17 competitor, WorldCom ("WCOM"), a local, long distance, voice and data
18 integrated carrier, which provides both local and long-haul wholesale and retail
19 services, and XO Communications ("XOXO"), a local and long-haul broadband
20 provider, serving both enterprise and wholesale customers. These numbers are
21 taken from the carriers "10-K" Annual Reports filed with the SEC.

22
23 2001

2000

Company	A/R Allowance/ Net A/R	A/R Allowance/ Net A/R
BLS	9.1%	7.3%
LVLT	20.6%	6%
NOPT	16.2%	13.6%
TWTC	38%	21.5%
WCOM	20.4%	22.5%
XOXO	15%	11.6%

BellSouth cannot reasonably or rationally justify requiring greater deposit requirements from ITC^DeltaCom. ITC^DeltaCom's long-term payment history with BellSouth is excellent. Additionally, BellSouth faces very low aggregate financial risk from its obligation to provide wholesale services—especially when compared with telecommunications service providers with less market power. Finally, it is compelling that the FCC recently considered and rejected similar requests from BellSouth.

Further evidence of BellSouth's unreasonable policy for the collection of deposits from CLEC's is indicated in their interrogatory response on this issue. That information indicates that while BellSouth has required deposits from only one tenth of one percent of retail business subscribers they have requested deposits from seventy eight percent of their CLEC customers. If, as they claim, BellSouth is applying the same deposit criteria to its retail customers and its wholesale

1 customers, it appears that the parameters are specifically designed to
2 disadvantage CLEC's as a customer class.

3
4 ITC^DeltaCom's proposed deposit parameters provide a reasonable balance
5 between each company's need to mitigate risk of non-payment and protection
6 from demands for unnecessary and financially burdensome deposits.
7 ITC^DeltaCom recommends the adoption of the following proposed deposit
8 parameters that are reciprocal and consistent with the FCC policy on deposits:
9

10 **Existing Customer Definition:**

11 Any customer with an existing business relationship with BellSouth.

12 **New Customer Definition:**

13 An entity that has had no prior business relationship with BellSouth
14 including the past relationship of a prior entity that makes up at
15 least 30% of the equity of the successor enterprise.

16 **Bill Due Date, Notice and Cure Intervals:**

17 The Due Date for payment is thirty (30) days from receipt of the
18 invoice. Late payment charges accrue after the Due Date. Notice of
19 delinquency will be provided ten (10) days after Due Date, and the
20 billed party will have fifteen (15) days from such notice to cure.

21 **Late Payment Definition:**

22 Payments are considered late if not postmarked or wire transferred
23 on or before the Due Date.

1 **Poor Payment History Definition:**

2 If greater than 10%, net legitimate disputes, of the average of the
3 last twelve months invoiced charges is outstanding 30 days after
4 Due Date, the Billing Party may utilize the remedies listed below
5 assuming the notice was provided and Billed party failed to cure.
6

7 **Liquidity Standard:**

8 ♦ EBITDA positive 12-month LTM basis excluding any
9 nonrecurring charges or special restructuring charges.
10

11 “EBITDA” means, for any period, the sum, determined on a
12 Consolidated basis, of (a) net income (or net loss) after eliminating
13 extraordinary and/or non recurring items to the extent included in net
14 income (except as provided in this definition), (b) interest expense, (c)
15 income tax expense, (d) depreciation expense, (e) amortization
16 expense, (f) the aggregate of all non-cash charges deducted in
17 arriving at net income in clause (a) above, including, but not limited to,
18 asset impairment charges, (g) any restructuring charges (h) all
19 restructuring charges incurred under or in connection with the Plan of
20 Reorganization, in each case of the Parent and its Subsidiaries,
21 determined in accordance with GAAP for such period (including,
22 without limitation, Emerging Issues Task Force Issue 94-3 and
23 Statement of Financial Accounting Standards No. 146).
24

1 ♦ Bond Rating is triple C or worse.

2
3 Upon notice of a material default of a bank (or other loan provider's)
4 debt covenant and upon the Billed Party's failure to either cure or
5 obtain a waiver from such default within 20 days of such notice, the
6 Billing Party may utilize the remedies listed below unless the Billed
7 Party has ample liquidity to fund the accelerated obligation.

8
9 **Remedies if fail Late Payment or Liquidity Standards:**

10 *Accelerated Payment Schedule*

11 Billed Party is required to pay half within 15 days and other half
12 within 30 days. Billing Party may designate up to 5 cycles. Billed
13 Party has (5) business days to cure if missed an accelerated
14 payment.

15
16 If Billed Party has not cured within 5 Business Days then:

17 *Partial Deposit*

18 Billing Party may require a ~~1/2-month~~2-month deposit for services
19 billed in arrears on a normal billing cycle and 1/4 month deposit for
20 services billed in advance subject to the 90% standard described
21 and upon making the deposit, the normal payment schedule
22 applies.

23 *Full Deposit*

1 If fail to provide deposit and after 15 day notice, then a 2 month
2 deposit for services billed in arrears and a one month deposit on
3 services billed in advance is due within thirty days.
4

5 **Deposit Refund:**

6 A deposit shall be refunded with accrued interest following a period
7 of six months prompt payment. In the case of a cash deposit, for
8 the period the deposit is held, the customer shall receive simple
9 interest at the rate of one percent per month (.000329 per day) or
10 12 percent annually.
11

12 **Issue 62: Limitations on Back Billing**

13 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING LIMITATIONS ON**
14 **BACK BILLING, AND WHAT IS YOUR RECOMMENDATION TO THE**
15 **ARBITRATION PANEL?**

16 **A:** ITC^DeltaCom's position is that back billing should be limited to 90 days between
17 carriers. Ninety days provides ample time for the rendering of correct invoices
18 and is being proposed as a reciprocal requirement. Back billing for extended
19 periods of time exposes both companies to the problem of not being able to
20 establish accurate cost structures for the pricing of retail services. Moreover,
21 back billing based on revisions in policy and or changes in the interpretation of
22 rules or regulation make it difficult for the billed party to challenge the new or
23 increased charges. Data that is readily available during a 90-day period may no

1 longer available over extended back billing periods. Although longer back billing
2 periods may be reasonable for retail services, the retail standard should not be
3 used for wholesale invoices.

4
5 As one example, ITC^DeltaCom received notice from BellSouth on March 21,
6 2003 regarding backbilling for daily usage file ("DUF") records provided in
7 February of 2000. See confidential correspondence attached as Exhibit A.

8
9 As it stands, ITC^DeltaCom has received or expects to receive backbilled
10 invoices for services provided in February 2000. Obviously, ITC^DeltaCom's
11 ability to operate as a competitor against BellSouth in the local market is in
12 severe jeopardy when BellSouth sends notification that it will be sending billing
13 for approximately \$550,000 for ODUF/ADUF records provided from February of
14 2000 to November of 2001. Certainly, ITC^DeltaCom's ability to go back to its
15 retail or access customers—incustomers in Tennessee and assess these charges
16 is limited. ITC^DeltaCom requests a reciprocal back billing period not to exceed
17 90 days.

18
19 **Issue 63: Audits – Pick and Choose**

20 **Q: WHAT IS ITC^DELTACOM'S POSITION REGARDING BELL SOUTH'S**
21 **REFUSAL TO ALLOW ITC^DELTACOM TO PICK AND CHOOSE BILLING**
22 **AUDIT LANGUAGE FROM ATTACHMENT 7 AND WHAT IS YOUR**
23 **RECOMMENDATION TO THE ARBITRATION PANEL?**

1 A: BellSouth has recently adopted a position that pick and choose rules do not
2 apply to billing language by asserting that billing is not a service under section
3 251. ITC^DeltaCom's position is that the pick and choose rule applies to all
4 contract provisions and specifically in the case of billing language. Billing has
5 long been considered a service as normal practice in the industry and we believe
6 BellSouth's position is without merit.

7
8 Furthermore, as I noted in my overview of the Act's nondiscrimination
9 requirements, the FCC has consistently held that access to OSS functionalities
10 (of which, billing is one) are a critical element of providing nondiscriminatory
11 access to UNEs under Section 251(c)(3). This has been a general requirement
12 applicable to all ILECs under the Act. With respect to the RBOCs, like BellSouth,
13 the FCC has further, and consistently, held "[d]eploying the necessary OSS
14 functions that allow competing carriers to order network elements and
15 combinations of network elements and *receive the associated billing information*
16 is critical to provisioning those network elements." (Ameritech Michigan 271
17 Order ¶ 160 (emphasis added). See also, Verizon Pennsylvania 271 Order ¶ 15
18 ("[c]onsistent with prior section 271 orders, a BOC must demonstrate that it
19 provides competing carriers with wholesale bills in a manner that gives
20 competing carriers a meaningful opportunity to compete." (internal citations
21 omitted)).

1 Thus, consistent with settled principles of nondiscriminatory access to UNEs as
2 well as BellSouth's continuing Section 271 obligations in this state,
3 ITC^DeltaCom recommends that BellSouth's prohibition on pick and choose—
4 with respect to carrier billing services—be denied.
5

6 **Q: IS IT APPROPRIATE TO INCLUDE LANGUAGE FOR AUDITS FOR THE**
7 **BILLING OF SERVICES UNDER THE INTERCONNECTION AGREEMENT?**

8 A. Yes. Regardless of whether BellSouth is required by law to provide
9 ITC^DeltaCom the opportunity to "pick and choose" audit language from other
10 carrier interconnection agreements, ITC^DeltaCom should have the right to audit
11 Bellsouth's billing.
12

13 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

14 A: Yes.

EXHIBIT A

EXHIBIT

A

@ BELL SOUTH

BellSouth Interconnection Services
875 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91083665

Date: May 23, 2003

To: Competitive Local Exchange Carriers (CLECs)

Subject: CLECs – REVISED; Reconciliation and Retroactive Billing of Unbundled Network Element – Platform (UNE-P) Market Rates (Originally posted on April 9, 2003)

As described in Carrier Notification SN91083301, posted to the BellSouth Interconnection Services' Web site on August 30, 2002, BellSouth began reconciling and applying retroactive billing of UNE-P Market Rates, where applicable, in October 2002. This first phase of reconciliation applied to recurring charges for UNE-P lines within the Federal Communications Commission (FCC) Unbundled Local Switching Exemption billed in April 2002 through June 2002 for Louisiana, and October 2001 through December 2001 for Florida.

Further reconciliation billing did not occur until January 2003. During this second phase, BellSouth reconciled and billed UNE-P Market Rates again for the same criteria and states but for the timeframes of July - August 2002 for Louisiana, and January - February 2002 for Florida.

The most recent and third phase of UNE-P Market Rate billing occurred in March 2003, and again applied to the same criteria but for the timeframes of September - October, 2002 for Louisiana and March - April, 2002 for Florida.

This is to advise that in May 2003, BellSouth will apply the fourth phase of reconciliation and billing of UNE-P Market Rates. This phase shall include recurring and nonrecurring charges for UNE-P lines within the FCC Unbundled Local Switching Exemption and will apply to Florida, Georgia, Louisiana, North Carolina and Tennessee. BellSouth will adhere to each CLEC's Interconnection Agreement and the state statute of limitations in the application of these charges. Billing shall apply to the following timeframes unless otherwise limited by the Interconnection Agreement.

Florida:	May 2002 – January 2003
Georgia:	February 2000 – January 2003
Louisiana:	November 2002 – January 2003
North Carolina:	February 2000 – January 2003
Tennessee:	February 2000 – January 2003

Due to the timing of entering the charges into the billing system, some charges were actually applied in the April 2003 bill period. The reconciled charges were entered into BellSouth's billing system on April 26, 2003 to be effective immediately. Therefore, CLECs with bill periods on the 26th and greater may have received their reconciled charges on their April 2003 bill for the impacted Q Accounts rather than the May bill. Not all CLECs with a bill period of the 26th and greater received the reconciled billing in the April bill period as the processing times varied for each state. BellSouth apologizes for any inconvenience this may have caused.

A prospective mechanized billing application of UNE-P Market Rates is still under development and an implementation date has not been determined. BellSouth will reconcile under-billed UNE-P Market Rates and will bill every six months from this point forward (every May and November of each year) until such mechanized solution can be developed.

The charges will be listed in the Other Charges and Credits (OC&C) portion of your company's BellSouth bill. Further, BellSouth will provide the underlying data supporting BellSouth's reconciliation of the charges for each affected telephone number on compact disc to the billing contact name provided by your BellSouth Local Contract Manager.

If you have questions regarding the Interconnection Agreement, please contact your Local Contract Manager. If you have questions regarding billing, please contact BellSouth's Billing and Collections department.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services